

***7 Official Opinions of the Compliance Board 85 (2011)***

**Meeting – Presence of quorum of Town Council at meeting with  
Library Trustees concerning funding request for  
consideration by Council triggered Open Meetings Act**

February 3, 2011

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The complaint alleged that the Town Council of Galena violated the Open Meetings Act when three of its members met with two trustees of the Kent County Library on September 28, 2010 and neither entity provided any advance notice of the meeting nor prepared any minutes. In the response to the complaint, the Town Attorney argued that the gathering was an “informational” meeting not subject to the Open Meetings Act. The Town Attorney also indicated that the Town Council has a strong policy in favor of openness and transparency and, as a result, has seldom closed its sessions.

For the reasons explained below, we conclude that the Town Council violated the Open Meetings Act when a quorum of that body met to receive information concerning the Library’s request that the Town increase its funding of the Library. Given the Mayor’s decision to cut that meeting short and defer discussion of the request to a public meeting, we believe that the violation was not intentional and will not be repeated.

**I**

**Complaint and Response**

We glean the following facts from the complaint and the Town’s response. The Kent County Library, which operates a branch in the Town of Galena, is partially subsidized by the Town. Concerned about financial difficulties of the library system, the Mayor scheduled a meeting with the head of the Library Board of Trustees on September 28, 2010, and invited a Council member to attend as well. The Mayor believed that the meeting was to be informational in nature. En route to the meeting, the Mayor ran into another member of the Council who, after a conversation with the Mayor, expressed a desire to accompany the Mayor to the meeting.

At the meeting, the Library Board president and another Library trustee shared the Library's budget and requested that the Town increase its financial assistance. According to the Town's response, the Mayor then indicated that any such request would have to be taken up at the next meeting of the Council on October 4, 2010 and that someone from the Kent County Finance Office and the Library Board should be present to answer any questions related to the request.

At the open Town Council meeting on October 4, 2010, a Library Board member and Kent County Financial Officer appeared to ask for financial assistance and to answer questions concerning the Library's financial situation. The minutes of the Council meeting, which were attached to the Council's response, indicate that, after some discussion, the Council agreed to waive the Library's water and sewer bill and to make a \$3,000 donation to the Library.

## II

### Analysis

For purposes of the Open Meetings Act, a "meeting" occurs if a quorum of a public body convenes "for the consideration or transaction of public business." §10-502(g). The public body must give reasonable advance notice of the meeting, normally meet in open session, and prepare minutes of the meeting. §§10-505, 10-506, 10-509. However, these requirements do not apply to a gathering of a quorum in "a chance encounter, social gathering, or other occasion that is not intended to circumvent [the Open Meetings Act]." §10-503(a)(2).

It appears to be undisputed that there was no advance notice given to the public for the September 28 meeting. Nor were any minutes prepared for it. Accordingly, if it was indeed a meeting covered by the Act, the Town Council violated the Act in failing to give notice or prepare minutes. Conversely, if it was not a meeting for purposes of the Act, the Town Council did not violate the Act.

Because the Town Council consists of five members, three members would ordinarily comprise a quorum. Thus, the planned meeting between the Mayor and Library trustees, as originally conceived, would not have involved a quorum of the Town Council even if another Council member was also present. However, ultimately three members of the Town Council attended the meeting with the two Library Board members. Thus, a quorum of the Town Council was present.

The September 28 gathering cannot reasonably be described as a “chance encounter, social gathering, or other occasion.”<sup>1</sup> Rather, an unplanned quorum of the Town Council was present at a meeting regarding public business – a possible increase in the Town’s subsidy of the Library.<sup>2</sup> The fact that the meeting was informational in nature would not take it outside the Open Meetings Act. 1 *OMCB Opinions* 35, 36 (1993) (“The imparting of information about a matter, albeit unaccompanied by any discussion among the members of a public body, constitutes the ‘consideration or transaction of public business’ with respect to that matter.... A briefing is often an important part of the process by which policy is made.”); *see also* Office of Attorney General, *Open Meetings Act Manual* at 2-8 (7<sup>th</sup> ed. 2010).<sup>3</sup> Thus, the September 28 gathering was a “meeting” of the Town Council for purposes of the Open Meetings Act.

Based on the information provided by the Town Attorney, however, we believe that the Mayor’s appointment with the two Library trustees and the unexpected addition of an additional Council member to that meeting was not intended to circumvent the Open Meetings Act. As described in the response, the Mayor unexpectedly crossed paths with the additional Council member while en route to his appointment with the Library Trustees. Although the

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While the meeting of the Mayor and Council member on the street might be characterized as a “chance encounter,” the decision of the Council member to attend the meeting meant that the presence of three Council members at that gathering was not by chance. The Town properly does not claim otherwise.

In some instances, the presence of an unplanned quorum of a public body does not trigger the requirements of the Open Meetings Act when the members attend as individual invitees of some other individual or entity and do not conduct public business. *See, e.g.*, 1 *OMCB Opinions* 183, 185 (1996); 1 *OMCB Opinions* 104 (1994). However, as we understand the facts of this case, it cannot be said that the members of the Town Council attended the meeting as individuals, as opposed to members of the public body that would consider the subsidy request that was the subject of the meeting.

If information is gathered collectively by a public body that has executive responsibilities as part of a budget preparation process, such an activity could be an administrative function to which the Open Meetings Act does not apply. *See* 3 *OMCB Opinions* 107, 110-11 (2001) (describing such activities under the former label “executive function”). Such a distinction must be based on pre-existing law, such as a municipal charter, that clearly delineates the executive phase of budget preparation from the quasi-legislative phase of budget consideration. The Town has not contended that the September 28 meeting was part of its budget preparation process.

appointment was kept with the unplanned quorum present, the Mayor cut the meeting short and deferred consideration of the request to the next meeting of the Council. Indeed, the minutes for the subsequent Town Council meeting reflect that the request for financial assistance was made at an open meeting, that the Council's discussion took place in open session, and that the Council vote in response to the request was also taken in the open.

### III

#### Conclusion

We conclude that the Town Council violated the Open Meetings Act when it met with two Library trustees to receive information concerning the Library's request that the Town increase its subsidy. Given the Mayor's decision to cut that meeting short and defer discussion of the request to a public meeting, we believe that the violation was not intentional and will not be repeated.

OPEN MEETINGS COMPLIANCE BOARD

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